

Notice of Allowability	Application No.	Applicant(s)	
	10/623,880	BARNETT ET AL.	
	Examiner	Art Unit	
	Young J. Kim	1637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment received on October 26, 2005.
2. ☒ The allowed claim(s) is/are 3, 10 and 19.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____ |
|---|---|

DETAILED ACTION

Claim Objections

The objection of claims 11 and 12, made in the Office Action mailed on September 28, 2005 is withdrawn in view of the present examiner amendment (canceling claim 12) and in view of the Amendment received on October 26, 2005 (canceling claim 11).

Claim Rejections - 35 USC § 112

The rejection of claims 9 and 11 under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter, made in the Office Action mailed on September 28, 2005 is withdrawn in view of the Amendment received on October 26, 2005, canceling the claims.

The rejection of claims 1, 2, 8, 9, 11, 17, and 18 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement, made in the Office Action mailed on September 28, 2005 is withdrawn in view of the present examiner amendment (canceling claims 1, 2, 8, 17, and 18) and in view of the Amendment received on October 26, 2005 (canceling claims 9 and 11).

The rejection of claims 3, 10, and 19 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement, made in the Office Action mailed on September 28, 2005 is withdrawn in view of the arguments presented in the Amendment received on October 26, 2005. Specifically, Applicants demonstrated that *Cladosporium carpophilum* is also known as *Venturia capophila* as they are art-recognized synonyms (*see* page 6, 1st paragraph, Response; and Exhibit A).

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ms. Kakefuda on January 5, 2006.

The application has been amended as follows:

In the Claims:

1. (Canceled)

2. (Canceled)

3. (Previously Presented) A pair of oligonucleotide primers, consisting of SEQ ID NO: 1 and SEQ ID NO: 27.

4-9. (Canceled)

10. (Currently Amended) A method for the detection of *Cladosporium carpophilum*, comprising the steps of:

(a) isolating DNA from a plant tissue infected with *Cladosporium carpophilum*;

(b) amplifying a part of the Internal Transcribed Spacer sequence of *Cladosporium carpophilum* using said DNA as a template in a polymerase chain reaction with ~~a~~ the pair of primers ~~according to~~ of claim ~~2~~ 3; and

(c) detecting *Cladosporium carpophilum* by visualizing the amplified part of the Internal Transcribed Spacer sequence.

11-18. (Canceled)

Art Unit: 1637

19. (Original) A diagnostic kit used in detecting a fungal pathogen, comprising the pair of primers of claim 3.

20-46. (Canceled)

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: primer consisting of SEQ ID NO: 27 is free of prior art. In addition, the primer pair consisting of SEQ ID NO: 1 and 27 is disclosed as giving, "good amplification for their specific target with no cross-amplification" (page 24, lines 7-9; Table 8). While several primer pairs were designed for the amplification of *Cladosporium carpophilum*, as the claimed primer pair gave the best amplification with no cross-amplification with species other than the target (see lines 5-7 and lines 7-9), the claimed primers demonstrate secondary characteristics unobvious to one of ordinary skill in the art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

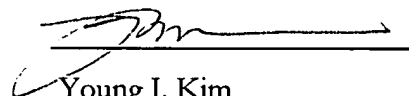
Inquiries

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Young J. Kim whose telephone number is (571) 272-0785. The Examiner is on flex-time schedule and can best be reached from 8:30 a.m. to 4:30 p.m. The Examiner can also be reached via e-mail to Young.Kim@uspto.gov. However, the office cannot guarantee security through the e-mail system nor should official papers be transmitted through this route.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Dr. Gary Benzion, can be reached at (571) 272-0782.

Art Unit: 1637

Papers related to this application may be submitted to Art Unit 1637 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR 1.6(d)). NOTE: If applicant does submit a paper by FAX, the original copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED, so as to avoid the processing of duplicate papers in the Office. All official documents must be sent to the Official Tech Center Fax number: (571) 273-8300. For Unofficial documents, faxes can be sent directly to the Examiner at (571) 273-0785. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.



Young J. Kim

Patent Examiner

Art Unit 1637

1/5/2006

**YOUNG J. KIM
PATENT EXAMINER**

yjk